

STATE OF MICHIGAN
COURT OF APPEALS

LEAR CORPORATION,

Plaintiff-Appellant,

v

BUTZEL LONG, PC, PHILIP J. KESSLER, J.
MICHAEL HUGET, C. GRANT VANDER
VEER, and JAMES J. BOUTROS, II,

Defendants-Appellees.

UNPUBLISHED

May 18, 2006

No. 258669

Ottawa Circuit Court

LC No. 04-050216-CZ

Before: Meter, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants and dismissing plaintiff's breach of fiduciary duty claim for lack of subject-matter jurisdiction. We affirm.

Plaintiff Lear Corporation (Lear) is a supplier of automotive interiors headquartered in Southfield, Michigan. Defendants Philip J. Kessler, J. Michael Huget, C. Grant Vander Veer, and James J. Boutros, II, are members of the law firm of Butzel Long, PC, a Michigan professional corporation with its main office in Detroit. In the mid-1990s, plaintiff retained Butzel Long to provide legal services to the corporation. Over the following years, Butzel Long represented Lear in product liability claims and provided some counseling to Lear officials; the individual defendants named in this lawsuit have never worked on any of these matters.

Johnson Controls Technology Company and Johnson Controls Interiors, LLC (Johnson Controls), automotive interior suppliers based in Holland, Michigan, retained Philip J. Kessler, J. Michael Huget, C. Grant Vander Veer, and James J. Boutros, II, to file a lawsuit against TwisThink, LLC. In the complaint, filed July 8, 2004, Johnson Controls alleged that TwisThink employees, previously retained by Johnson Controls to work on a prototype for an in-vehicle, universal garage door opener, were sharing this confidential and trade secret information with Lear Corporation. While Lear is not a party to this litigation, Butzel Long decided to withdraw as counsel for Lear due to concerns that potential conflicts of interest might arise from their continued representation of Lear. Richard E. Rassel, chief executive officer for Butzel Long, notified Lear representatives in person on July 27, 2004, of the firm's intent to cease providing legal and counseling services to Lear and sent a follow-up letter reiterating these intentions on August 2, 2004.

Plaintiff filed a one-count complaint for injunctive relief on September 8, 2004, claiming defendants breached their fiduciary duties of loyalty to plaintiff and seeking to enjoin Butzel Long from providing further representation to Johnson Controls in their action against TwisThink. Many of the allegations in plaintiff's complaint were based on its contention that defendants violated rules 1.7 and 1.16 of the Michigan Rules of Professional Conduct (MRPC).

On September 21, 2004, defendants moved for summary disposition under MCL 2.116(C)(4) (lack of subject-matter jurisdiction), MCL 2.116(C)(8) (failure to state a claim on which relief may be granted), and MCL 2.116(C)(10) (lack of a genuine issue of material fact). The trial court dismissed plaintiff's complaint for lack of subject-matter jurisdiction and granted defendant's motion under MCR 2.116(C)(4). The court did not address the motion under the other subrules. This appeal followed.

Plaintiff argues that the trial court erred in dismissing plaintiff's complaint under MCR 2.116(C)(4) for lack of subject-matter jurisdiction. We agree, but we also conclude that defendants should have been granted summary disposition under MCR 2.116(C)(8) due to plaintiff's failure to state a claim on which relief may be granted. This Court reviews de novo the trial court's decision to grant a motion for summary disposition based on a lack of subject-matter jurisdiction. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205-206; 631 NW2d 733 (2001).

Our Supreme Court has noted:

Jurisdiction over the subject-matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial. [*Joy v Two-Bit Corp*, 287 Mich 244, 253-254; 283 NW 45 (1938) (internal citation and quotation marks omitted).]

The trial court recharacterized plaintiff's breach of fiduciary duty claim as a claim that defendants violated MRPC 1.7 and 1.16. However, plaintiff did not solely allege that defendants violated MRPC 1.7 and 1.16; instead, it referred to these provisions to establish the basis for its claim that defendants breached their fiduciary duty of loyalty to plaintiff. Therefore, the circuit court erroneously dismissed plaintiff's complaint for lack of subject-matter jurisdiction.

MCL 600.605 gives circuit courts original jurisdiction to hear and determine all civil claims, except "where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." This state recognizes a common-law fiduciary duty claim. See *In re Estate of Cummin (After Remand)*, 267 Mich App 700, 701-706; 706 NW2d 34 (2005), rev'd in part on other grnds ___ Mich ___, 2006 WL 1098039 (2006). Furthermore, our Supreme Court recognizes that a fiduciary relationship exists between an attorney and his client. *In re Estate of Karmey*, 468 Mich 68, 75 n 2; 658 NW2d 796 (2003), quoting Black's Law Dictionary (7th ed). Therefore, the circuit court has jurisdiction over common-law breach of fiduciary duty claims by a client against his attorney unless this jurisdiction is expressly prohibited by law.

Defendant argues that MRPC 1.0(b) divested the circuit court of jurisdiction to hear this lawsuit because the substance of plaintiff's complaint "presents the sole question of whether Butzel Long and its lawyers had an ethical conflict of interest preventing their participation in a lawsuit to which Lear is not a party" (emphasis in original). MRPC 1.0(b) states:

Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process. The rules do not, however, give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with an obligation or prohibition imposed by a rule. In a civil or criminal action, the admissibility of the Rules of Professional Conduct is governed by the Michigan Rules of Evidence and other provisions of law.

Again, a court may consider only the allegations made in a complaint to determine if it has subject-matter jurisdiction to hear a particular claim. See *Joy, supra* at 253-254. While MRPC 1.0 prohibits a party from establishing a valid cause of action based solely on a MRPC violation, plaintiff did not plead solely on a MRPC violation in its complaint; instead, plaintiff also set forth an alleged breach of fiduciary duty. MRPC 1.0(b) simply does not preclude a plaintiff from filing a common-law breach of fiduciary duty claim, and defendant does not argue that another statutory or constitutional provision precludes the circuit court from having jurisdiction over common-law breach of fiduciary duty claims. Therefore, the circuit court had subject-matter jurisdiction over plaintiff's breach of fiduciary duty claim, and it erred in recharacterizing plaintiff's claim and dismissing it under MCR 2.116(C)(4).

Nevertheless, we conclude that the trial court should have dismissed plaintiff's claim for failure to state a claim on which relief may be granted. See MCR 2.116(C)(8). "An order granting summary disposition under the wrong rule may be reviewed under the correct rule." *Wickings v Arctic Enterprises, Inc.*, 244 Mich App 125, 147; 624 NW2d 197 (2000), quoting *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). Therefore, this Court may properly review the trial court's grant of summary disposition to defendants based on the standards of MCR 2.116(C)(8), even though the trial court granted summary disposition under MCR 2.116(C)(4).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. When deciding a motion brought under this section, a court considers only the pleadings. [*Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999) (internal citations and quotation marks omitted).]

This state treats a breach of fiduciary duty claim as a common-law tort. *Miller v Magline, Inc.*, 76 Mich App 284, 313; 256 NW2d 761 (1977). "[A] plaintiff's cause of action for a tortious injury accrues when all the elements of the cause of action, including the element of damage, have occurred and can be alleged in a proper complaint." *Travelers Ins Co v Guardian Alarm Co of Michigan*, 231 Mich App 473, 479; 586 NW2d 760 (1998). Relief for a breach of a fiduciary duty may be sought when a "position of influence has been acquired and abused, or

when confidence has been reposed and betrayed.” *Vicencio v Ramirez*, 211 Mich App 501, 508; 536 NW2d 280 (1995).

This Court has stated:

[T]hough failure to comply with the requirements of [the MRPC] may provide a basis for invoking the disciplinary process, such failure does not give rise to a cause of action for enforcement of the rule or for damages caused by failure to comply with the rule. MRPC 1.0(b). [*Watts v Polaczyk*, 242 Mich App 600, 607 n 1; 619 NW2d 714 (2000).]

Although plaintiff properly alleged a breach of fiduciary duty in its complaint, it relied entirely on MRPC 1.7 and 1.16 *to establish that this breach occurred*. Plaintiff noted in its complaint that defendants had a duty of loyalty to plaintiff as “reflected” in MRPC 1.7 but that they breached this duty by undertaking representation of Johnson Controls “in violation of” this rule. Furthermore, plaintiff noted that defendants violated MRPC 1.16 by representing Johnson Controls in the TwisThink litigation, even though this litigation was adverse to plaintiff. Finally, plaintiff concluded, “Under Michigan Rules of Professional Conduct, no proper basis existed for Butzel to terminate Lear as a client,” and “[a]s a result of Defendants’ breach of their fiduciary and ethical duties to Lear, Lear has been, and will continue to be, irreparably harmed.”

Plaintiff attempted to establish in its complaint that defendants breached their fiduciary duty of loyalty solely by alleging violations of the MRPC. Yet, according to MRPC 1.0(b), plaintiff cannot bring a cause of action before the circuit court alleging that it suffered harm solely because defendants breached the MRPC. Therefore, plaintiff failed to state a proper claim for which relief could be granted before the circuit court, and the circuit court should have dismissed plaintiff’s complaint under MCL 2.116(C)(8).

Indeed, in its complaint, plaintiff asked for injunctive relief, requesting that the circuit court “[bar] Defendants from pursuing any further activity on behalf of Johnson Controls in [the TwisThink case]” and “[disqualify] Defendants from representing Johnson Controls in [the TwisThink case].” In making this request, plaintiff essentially asked the circuit court to enforce the MRPC by preventing defendants from representing Johnson Controls in the TwisThink litigation. MRPC 1.0(b) precludes plaintiff from requesting the circuit court to impose injunctive relief to force defendants to comply with the MRPC. Moreover, in order to state a proper claim, a plaintiff must state “[a] demand for judgment for the relief the pleader seeks.” MCR 2.111(B)(2). Because plaintiff only sought injunctive relief, and it cannot request injunctive relief from the circuit court to enforce a violation of the MRPC, plaintiff failed to state a proper claim for relief. Accordingly, the circuit court should have dismissed plaintiff’s complaint under MCR 2.116(C)(8).

In addition to inadequately establishing a valid cause of action before the circuit court, plaintiff failed to adequately present the elements of causation or damages in its complaint. MCR 2.111(B)(1) requires a plaintiff to include in its complaint “[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend” Factually unsupported conclusions are inadequate to state a claim on which relief can be granted. *Stann v Ford Motor Co*, 361 Mich 225, 232-233;

105 NW2d 20 (1960); *Binder v Consumers Power Co*, 77 Mich App 343, 346-347; 258 NW2d 221 (1977).

While plaintiff alleged that defendants violated MRPC 1.7 and MRPC 1.16, plaintiff did not adequately describe how the alleged breach caused harm or damage. In its complaint, plaintiff alleged, “As a result of Defendants’ breach of their fiduciary and ethical duties to Lear, Lear has been, and will continue to be, irreparably harmed.” Plaintiff also alleged, “Lear has no adequate remedy at law for Butzel’s actions because the damages that Lear has suffered, and will continue to suffer, from Butzel’s breach of its ethical duties of loyalty are not fully compensable by money damages and are incapable of exact proof.” Yet, while plaintiff alleged in its complaint that defendants terminated their attorney-client relationship with plaintiff to represent Johnson Controls in litigation that was potentially adverse to plaintiff, and that defendants violated two requirements of the MRPC in doing so, plaintiff never provided any specific description of any damages suffered as a result of this breach. Even in its reply brief on appeal, plaintiff merely notes “that Lear has been harmed as a result of Butzel’s breach of its duties to Lear.” Plaintiff provided nothing more than a conclusory statement that it suffered harm as a result of defendants’ breach, and it failed to notify defendants of any facts, circumstances, or scenarios indicating that it suffered compensable harm. Such unsupported conclusions that plaintiff suffered damages as a result of defendants’ breach were inadequate to state a claim on which relief can be granted.

This Court will not reverse a trial court’s order if the trial court reached the correct result, albeit for the wrong reasons. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). Therefore, while we conclude the trial court erred in dismissing plaintiff’s complaint for lack of subject-matter jurisdiction, we affirm the trial court’s grant of summary disposition to defendants, because plaintiff’s complaint should have been dismissed for failure to state a claim on which relief could be granted. MCR 2.116(C)(8).

Finally, plaintiff argues that law firms should not be immune from a client’s allegation of a breach of a fiduciary duty. This Court has stated:

It is well-settled that “[a] party may not leave it to this Court to search for authority to sustain or reject its position.” Argument must be supported by citation of appropriate authority. An appellant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue. [*Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004) (internal citations omitted).]

Plaintiff has cited no authority, or even made a cognizant argument, to support its “law firm immunity” claim. Therefore, this Court need not address the issue further. *Byrne v Schneider’s Iron & Metal, Inc*, 190 Mich App 176, 183; 475 NW2d 854 (1991).

Affirmed.

/s/ Patrick M. Meter
/s/ William B. Murphy
/s/ Jane E. Markey